

INDIVIDUAL PRACTICES OF HON. KIMBA M. WOOD
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
(Revised 12/05/08)

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SOUTHERN DISTRICT OF NEW YORK**

(Revised 12/05/08)

Unless otherwise ordered by Judge Wood, matters before Judge Wood shall be conducted in accordance with the following practices:

1. Communications With Chambers

A. Letters. Except as otherwise provided below, communications with chambers shall be by letter, with copies simultaneously delivered to all counsel. Letters to the Court are not docketed. If a party wishes to preserve such letters for the record on appeal, it must submit a written request to the Court within ten (10) days of closure of the case. Copies of correspondence between counsel shall not be sent to the Court.

B. Telephone Calls. Except as provided in Paragraph 1(D) below, telephone calls to chambers are permitted only in emergency situations requiring immediate attention. In such situations only, call chambers at (212) 805-0258.

C. Faxes. Faxes to chambers are permitted only if copies are also simultaneously faxed or delivered to all counsel. No document longer than 20 pages may be faxed without prior authorization. Do not follow with hard copy. The fax number is (212) 805-7900.

D. Docketing, Scheduling, and Calendar Matters. For docketing, scheduling and calendar matters, call Ms. Sara LaJoie, Esq. at (212)-805-0125 between 9:00 a.m. and 4:30 p.m.

E. Requests for Adjournments or Extensions of Time. All requests for adjournments or extensions of time must state (1) the original date, (2) the number of previous requests for adjournment or extension, (3) whether these previous requests were granted or denied, and (4) whether the adversary consents, and, if not, the reasons given by the adversary for refusing to consent. If the requested adjournment or extension affects any other scheduled dates, a proposed Revised Scheduling Order (reflecting only business days) must be attached. If the request is for an adjournment of a court appearance, absent an emergency, it shall be made at least 48 hours prior to the scheduled appearance.

F. Disputes. Unless directed otherwise, counsel should describe their disputes in a single letter, jointly composed. Separate and successive letters will be returned, unread. Strict adherence to Fed. R. Civ. P. 37(a)(2)(A), the meet and confer rule, is required, and should be described in the joint submission as to time, place and duration, naming the counsel involved in the discussion.

2. Motions

A. Pre-Motion Conferences in Civil Cases. For discovery motions, follow Local Civil Rule 37.2. For motions other than discovery motions, a pre-motion conference with the Court is required before making any motion, except motions that are required by the Federal Rules of Appellate Procedure to be made by a certain time, Temporary Restraining Orders, injunctions, motions in lieu of Answer, motions to remand, motions for reargument or reconsideration, objections to Magistrate Judges' rulings, applications for attorneys' fees, motions for sanctions, motions for reduction of sentence, pro hac vice motions, motions involving persons in custody, and petitions to confirm or compel arbitration. To arrange a pre-motion conference, the moving party shall submit a letter not to exceed three pages in length setting forth the basis for the anticipated motion.

B. Courtesy Copies. Courtesy copies of all motion papers, marked as such, should be submitted to chambers.

C. Memoranda of Law. Unless prior permission has been granted, memoranda of law in support of and in opposition to motions are limited to 25 pages, and reply memoranda are limited to 10 pages. Memoranda of 10 pages or more shall contain a table of contents.

D. Filing of Motion Papers. Notice of motion and motion papers shall be filed with the Court promptly after service. The moving party is further obligated to furnish to chambers a full set of courtesy copies of the motion papers at the time the motion becomes fully briefed. A Court Order is required to extend the briefing schedule beyond the time frame set out in Local Civil Rule 6.1(b).

E. Oral Argument on Motions. Parties may request oral argument by letter at the time their moving or opposing or reply papers are filed. The Court will determine whether argument will be heard and, if so, will advise counsel of the argument date.

F. Failure of the Court to Schedule Argument or Decide a Motion. If a motion is not decided within 60 days of the time it is fully submitted or of argument, counsel for the movant

shall submit a letter to call this fact to the Court's attention.

G. Summary Judgment Motions.

i. **56.1 Statement.** Any party wishing to file a motion for summary judgment or partial summary judgment (the "moving party") shall inform the Court of its wish to file a summary judgment motion, and shall attach to its request a Local Civil Rule 56.1 Statement (the "56.1 Statement"). The 56.1 Statement must contain only one factual assertion in each numbered paragraph. Each factual assertion must be followed by a citation to the portion(s) of the evidentiary record relied upon. For example, "Ms. Jones visited Dallas, Texas on July 10, 1989. Smith Affidavit at ¶ 3; Hays Deposition at page 25."

ii. **56.1 Response.** The party intending to oppose the prospective motion for summary judgment (the "opposing party") must submit a response to the moving party's 56.1 Statement (a "56.1 Response"). The 56.1 Response must contain numbered paragraphs tracking those in the 56.1 Statement; each numbered paragraph in the 56.1 Response must address the allegations made in the identically numbered paragraph of the 56.1 Statement. Each paragraph must state what aspects of the moving party's allegation is admitted, what is disputed, and the basis for any dispute, citing specifically the portion(s) of the evidentiary record relied upon. For example, "Ms. Jones was in New York City at all times during the month of July 1989. Jones Affidavit at ¶ 8; Walsh Deposition at pages 50-53." The opposing party must respond to all of the allegations in the moving party's 56.1 Statement. Lack of relevance is not a valid reason for refusing to agree that a fact is not "in dispute." Each assertion must be a factual assertion, not a legal assertion.

iii. **56.1 Counterstatement.** An opposing party wishing to make additional factual allegations, beyond those made by the moving party in the 56.1 Statement and responded to by the opposing party in the 56.1 Response, may do so by including those additional factual allegations at the end of a 56.1 Response (a "56.1 Counterstatement"). The first paragraph containing a new allegation must be numbered consecutively to follow the last number used in the moving party's 56.1 Statement and the opposing party's 56.1 Response. For example, if the moving party's 56.1 Statement and the opposing party's 56.1 Response ended at paragraph 50, the opposing party's 56.1 Counterstatement would begin at paragraph 51.

iv. **56.1 Counterresponse.** If an opposing party chooses to make additional factual allegations in a 56.1 Counterstatement, the moving party must file a response to the opposing party's 56.1 Counterstatement (a "56.1

Counterresponse"). The Counterresponse must conform to the guidelines for a 56.1 Response above.

v. **Multiple 56.1 Statements.** If multiple parties are submitting 56.1 Statements, they must coordinate their statements to ensure that all paragraphs making assertions regarding a particular fact are identically numbered.

vi. **Permission to File Motion for Summary Judgment.** Upon receipt and review of all 56.1 Statements, Responses, Counterstatements, and Counterresponses, the Court will inform the parties whether a motion for summary judgment is warranted.

3. Pretrial Procedures

A. Joint Pretrial Orders in Civil Cases. Unless otherwise ordered by the Court, within 30 days from the date for the completion of discovery in a civil case, the parties shall submit to the Court for its approval a joint pretrial order, which shall include the following:

- i. The full caption of the action.
- ii. The names, addresses (including firm names), and telephone and fax numbers of trial counsel.
- iii. A brief statement by plaintiff as to the basis for subject matter jurisdiction, and a brief statement by each of the other parties as to the presence or absence of subject matter jurisdiction. Such statements shall include citations to all statutes relied on and relevant facts as to citizenship and jurisdictional amount.
- iv. A brief summary by each party of the claims and defenses that party has asserted which remain to be tried, without recital of evidentiary matter but including citations to all statutes relied on. Such summaries shall identify all claims and defenses previously asserted which are not to be tried.
- v. A statement by each party as to whether the case is to be tried with or without a jury, and the number of trial days anticipated.
- vi. A statement as to whether or not all parties have consented to trial of the case by a magistrate judge (without identifying which parties have or have not so consented).
- vii. Any stipulations or agreed statements of fact or law which have been agreed to by all parties.

viii. A statement by each party as to the witnesses whose testimony is to be offered in its case in chief, indicating whether such witnesses will testify in person or by deposition.

ix. A designation by each party of deposition testimony to be offered in its case in chief, with any cross-designations and objections by any other party.

x. A list by each party of exhibits to be offered in its case in chief, with one star indicating exhibits to which there are objections, but no party objects on grounds of authenticity, and two stars indicating exhibits to which no party objects on any ground.

xi. In jury cases, proposed voir dire questions and requests to charge. Prior to submitting their requests to charge to the Court, parties shall (1) provide their proposed jury charges to each other; (2) meet to discuss their charges in an effort to agree to as many proposed charges as possible; and (3) prepare a single compact disc ("CD") for the Court which provides, for each charge, either (a) the agreed to proposed charge, or, to the extent the parties cannot agree on a proposed charge, (b) Plaintiff's proposed charge with (i) Defendant's objections to that charge (both cuts and additions) reflected in red-line edits to the proposed charge, or, if Defendants object to Plaintiff's charge in its entirety, (ii) Defendant's own proposed charge. In preparing the foregoing, the parties must provide legal authority for any jury charge they jointly or singly propose, as well as for any objection they raise to another party's proposed charge. They shall submit this CD to the Court with their pretrial order;

xii. In nonjury cases, a statement of the elements of each claim or defense involving such party, together with a summary of the facts relied upon to establish each element;

xiii. In all cases, a statement describing motions addressing any evidentiary or other issues which should be resolved in limine; and

xiv. In any case where such party believes it would be useful, a pretrial memorandum.

B. Ready Trial Date. A case will be deemed Ready for Trial on the date the parties submit the Joint Pretrial Order. At any time after the Ready Trial date, the Court may call the parties to trial upon forty-eight hours notice. No adjournment of that trial date will be permitted, unless

counsel has faxed to chambers an affidavit stating that he or she is engaged in trial in another court. This affidavit shall include: (1) the caption of the other case, including its index number; (2) the expected length of the trial; (3) the court in which the other case is to be tried; and (4) the name and telephone number of the judge presiding over the case. Counsel shall notify the Court and all other counsel in writing, at the earliest possible time, of any particular scheduling problems involving out-of-town witnesses or other exigencies.

4. Bankruptcy Appeals

The attention of all counsel is directed to Rule 8009 of the Federal Bankruptcy Rules, which provide for the time within which briefs are to be served and filed.

5. Benefactor Payments in Criminal Cases

Defense counsel, in all criminal cases, are required to ask the Court, at the first conference, to hold a Curcio hearing whenever counsel has received, or is receiving, a benefactor payment that subjects counsel to a conflict of interest.